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11 CAINE & WEINER COMPANY, INC.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JESSE GARCIA, JR. on behalf of  
himself and all others similarly  
situated,

) CASE NO. 16-cv-00850-DMS (DHB)

) **ORAL ARGUMENT**

)  
Plaintiffs,  
) **NOTICE OF MOTION AND**  
v. ) **MOTION TO DISMISS SECOND**  
CAINE & WIENER COMPANY, ) **AMENDED COMPLAINT AND**  
INC. and NESTLÉ WATERS ) **STRIKE CLASS ALLEGATIONS**  
NORTH AMERICA, INC., ) **PURSUANT TO FED. R. CIV. P.**  
Defendant ) **12(b)(6), 12(f) AND 23(d)(1)(D) AND**  
)) **JOINDER IN NESTLE MOTION TO**  
)) **DISMISS**

)  
Date: January 20, 2017

) Time: 1:30 p.m.

) Judge: Hon. Dana M. Sabraw

) Dept.: 13A

1 **TO THE COURT, EACH PARTY, AND TO THE ATTORNEY OF**  
2 **RECORD FOR EACH PARTY IN THIS ACTION:**  
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4 NOTICE IS HEREBY GIVEN that on Friday, January 20, 2017, at  
5 1:30 p.m., in Department 13A of the Court, located at 333 West Broadway,  
6 San Diego, California 92101, or as soon thereafter as counsel may be heard,  
7 Defendant Caine & Weiner Company, Inc. (“C&W”) will move for an order to  
8 dismiss with prejudice the Second Amended Complaint filed by plaintiff Jesse  
9 Garcia, Jr. (“Plaintiff”) pursuant to Fed. R. Civ. P. 12(b)(6), and to move to  
10 dismiss or strike Plaintiff’s class claims against C&W pursuant to Fed. R. Civ. P.  
11 12(b)(6), 12(f) and 23(d)(1)(D).  
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14 The motion to dismiss Plaintiff’s individual claims pursuant to Fed. R. Civ.  
15 P. 12(b)(6) is made upon the following grounds:  
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18 Plaintiff fails to state a plausible claim for relief under the Telephone  
19 Consumer Protection Act, 47 U.S.C. §227(b)(1) (“TCPA”) or Fair Debt Collection  
20 Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, as he does not identify  
21 specific dates, times and identify the relevant defendant with respect to the calls at  
22 issue in this case.  
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25 The motion to dismiss or strike Plaintiff’s class claims pursuant to to Fed.  
26 R. Civ. P. 12(b)(6), 12(f) and 23(d)(1)(D) is made upon the following grounds:  
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1 Plaintiff has failed to state a claim against C&W for class-wide relief under  
2 the TCPA as Plaintiff's allegations do not establish the existence of a plausible  
3 class based on the unique circumstance alleged with respect to Plaintiff.  
4

5 Plaintiff has failed to state a claim against C&W for class-wide relief under  
6 the FDCPA as Plaintiff's allegations do not establish the existence of a plausible  
7 class based on the unique circumstance alleged with respect to Plaintiff.  
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9 C&W also joins in Defendant Nestle Waters North America, Inc.'s  
10 ("NWNA") motion to dismiss.

12 This motion and joinder are based upon this Notice of Motion,  
13 Memorandum of Points and Authorities, the pleadings, records and files in this  
14 action, and upon all oral and documentary evidence presented at the hearing of  
15 this Motion.

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19  
20 Dated: December 1, 2016

**CARLSON & MESSER LLP**

21 By: /s/ David J. Kaminski

22 David J. Kaminski  
23 Stephen A. Watkins  
24 Attorneys for Defendant,  
CAINE & WEINER COMPANY,  
INC.

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2016, a true and correct copy of the foregoing NOTICE OF MOTION TO DISMISS was filed through the ECF system, which will send notification of such filing to the following e-mail addresses:

Atorneys for Plaintiff	Atorneys for NWNA
Kira M. Rubel Law Offices of Kira M. Rubel 19689 7th Ave. NE Suite 160 Poulsbo, WA 98370 Email: krubel@kmrlawfirm.com	Jeffrey M. Garrod Orloff, Lowenbach, Stifelman & Siegel, P.A. 101 Eisenhower Parkway Suite 400 Roseland, NJ 07068 Pro hac vice jmg@olss.com

DATED: December 1, 2016

CARLSON & MESSER LLP

By: s/David J. Kaminski  
David J. Kaminski  
Attorneys for Defendant  
CAINE & WIENER COMPANY, INC.